

# Landlord and Tenant (Ireland) (No. 2) Bill.

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## SCHEDULE.

A  
B I L L

TO

Amend the Law of Landlord and Tenant in Ireland.

A.D. 1879.

WHEREAS lands let for agricultural purposes in Ireland have been for many years past very generally held by the occupiers on a tenancy from year to year, or other uncertain periods, and it has been found by experience that in the circumstances of Ireland such tenure is not sufficient either to ensure to the industrious occupier the benefits of his industry, or to encourage occupiers to apply their industry to the proper cultivation and due improvement of their farms, to the great discouragement of industry, the hindrance of agriculture, and detriment to the peace and prosperity of the country; and whereas it is expedient that provision should be effectually made to enable the occupiers of such lands to hold same upon tenures sufficiently secure to induce them to make improvements, which will make the land more productive for the general good, and better secure the rents payable, and thereby promote the well-being of the community at large:

And whereas in the province of Ulster a custom has prevailed from ancient times under which in all holdings subject to such custom were secured to the tenant a right of occupancy and a right of selling his interest subject to such conditions as were conferred by the usage under such custom:

And whereas the rights of occupancy and sale of his interest secured to the tenant by the Ulster custom have proved by experience to be most beneficial in promoting the prosperity and contentment of the people of that province; and whereas in order to secure and legalise such custom, and to make the tenure of occupiers of the land less uncertain and precarious, an Act was passed in the thirty-fourth year of the reign of Her Majesty the now Queen, entitled "An Act to amend the Law relating to the occupation and ownership of Land in Ireland," whereby it was amongst other things enacted that the usages prevalent in the province of Ulster which were known as and in that Act intended to be included under the denomination of the Ulster tenant right custom, were thereby declared to be legal, and should in the case of

[Bill 51.]

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33 & 34 Vict.  
c. 46.

A.D. 1879, any holding in the province of Ulster proved to be subject thereto, be enforced in manner provided by the said Act; and by the said Act compensation was also provided in certain cases for tenants in any part of Ireland evicted from or quitting their holdings when not subject to such custom, and also for securing to the tenants compensation in respect of improvements effected by them:

And whereas it is necessary, in order effectually to carry out the intention and object of the said Act, to make further provisions for securing and enforcing the usages and customs declared legal by said Act, and also in relation to the compensation for tenants quitting their farms, and it is also expedient to remove and settle difficulties and doubts which have arisen in the administration of the said Act, and for these and other purposes to amend the laws relating to the tenure of land in Ireland; and it is also expedient that all occupiers of land in Ireland should be enabled to hold their lands by a certain and secure tenure:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; that is to say,

Short title. 1. This Act may be cited on all occasions and for all purposes as the Landlord and Tenant (Ireland), Act, 1879.

Interpretation of terms. 2. Whenever the expression "the Land Act" is herein-after used it shall mean the herein-before recited Act of the thirty-fourth year of the reign of Her Majesty the now Queen.

The expression "land tribunal" in this Act shall, until Parliament shall make other provision, mean the chairman or other person presiding at land sessions under the provisions of the Land Act.

All acts herein required or authorized to be done by the Lord Lieutenant may be done by the Lord Deputy, the Lords Justices, or other person or persons executing the office of general governor of Ireland.

Incorporation of Acts. 3. This Act and the Land Act and the Acts amending same shall be read together as one Act, together with the rules heretofore made by the Judges of the Court for Land Cases Reserved, and by the Privy Council, in pursuance of the powers conferred on them by the Land Act.

Act divided into three parts. 4. For all purposes of construing this Act it shall be deemed and taken to be divided into three parts, as follows:

The first part containing provisions for better securing the Ulster custom of tenant right.

The second part containing provisions for the amendment of the Land Act.

A.D. 1879.

The third part containing provisions enabling the occupiers of land in Ireland to obtain certain and secure tenures.

## PART I.

PROVISIONS FOR BETTER SECURING THE ULSTER CUSTOM OF  
TENANT RIGHT.

5. All the provisions of the Land Act which relate to the Ulster tenant right custom, and the usages known as and intended to be included under that denomination, shall apply to every holding in the province of Ulster which is proved to be subject to said custom or usages, although such holding may not be agricultural or pastoral in its character, or although same may be excepted from the holdings entitled to compensation under the said Act.

Provisions as to Ulster customs extended to all classes of holdings.

6. When it is proved that any holding is subject to the Ulster tenant right custom, and that, under and by virtue of the custom, the tenant is entitled to sell his interest in his holding to an incoming tenant, no restriction upon the price to be obtained or paid for said interest, or upon the mode or manner of sale, or upon such sale in any respect, shall be admitted in control or derogation of such right of sale, unless it shall be shown that such restriction has been in force either in relation to the particular holding, or to the estate of which it forms a part, according to the custom as anciently observed.

Right of sale not to be restricted by new rules.

7. It is hereby declared that no clause, matter, or thing contained in any lease, agreement, or any instrument of letting, with or without an actual demise, shall be deemed sufficient to prevent the Ulster custom taking effect in the case of any holding otherwise proved to be subject to same, unless and so far as it be proved that, according to such custom or usage, as same has been anciently observed, such clause, matter, or thing would have had that effect; and at the expiration of any lease, letting, or demise, the tenant shall have and enjoy all the benefits to which he is entitled under the Ulster custom as anciently observed.

Leases not to interfere with the Ulster custom as anciently observed.

8. When the tenant of any holding subject to the Ulster custom of tenant right shall be desirous of selling or assigning his interest to any person, and the landlord shall refuse to accept the proposed assignee, or shall, within *one month* after application

Proceeding in case landlord refuses to accept per-

A.D. 1879.  
 chaser as  
 tenant.

made in writing to him or his agent, neglect so to do, it shall be lawful for the tenant thereupon to serve a notice of claim, in manner prescribed by the Land Act, claiming that said assignee shall be declared tenant of such holding in accordance with and under the Ulster custom of tenant right. Such notice shall be served one month before the land sessions for which it is given. The claim shall be heard upon proof that such notice has been given without any further notice; and if upon the hearing of such claim it shall appear to the court that according to the custom to which such holding is proved to be subject, the landlord was not justified, as such custom was anciently observed, in refusing to accept the assignee as tenant, then and in that case the court shall make an order to that effect, and thereupon the assignment to such assignee by the occupying tenant of his interest in the farm shall vest in such assignee all his right and interest under the tenant right custom as fully and effectually as if the landlord had accepted him as tenant; provided always, that the court shall and may annex to the said order all such conditions as to the application of the purchase money, or otherwise, as shall appear to be in accordance with the Ulster custom, as anciently observed, in relation to such holding, and such order may be made with or without costs, as to the court may seem just; and if the claimant shall fail, on the hearing of his claim, to establish his right to have such assignee accepted as tenant, the court shall dismiss such claim, with or without costs, and every order or dismissal shall be subject to the same appeal in all respects as is provided in the Land Act: Provided always, that the landlord shall not be compelled to accept any such assignee as tenant unless upon payment of all arrears of rent that may be due to him, together with any costs, to which the outgoing tenant may be liable, of any legal proceeding taken for the recovery of such rent, or of the lands by ejectment for nonpayment of rent.

Court may  
 dismiss  
 claim.

Claims to be  
 determined  
 by the usage.

9. It is hereby declared that all claims made and all questions arising in relation to the Ulster custom of tenant right, either under the Land Act or this Act, shall be determined by a reference to such custom as same shall be proved to be applicable to the holding in respect to which such claim is made; and every court disposing of such claims or question shall give to all parties interested in such claim or question all the rights to which they are entitled under the Ulster custom, as declared legal by the Land Act and by this Act.

Custom to be  
 enforced as  
 it prevailed

10. Whenever in this Act any reference is made to the Ulster custom, as anciently observed, it shall mean the custom as it pre-

vailed at a period of *forty years* before the passing of this Act :  
 Provided always, that unless where it is otherwise herein expressly  
 provided, the custom as prevailing at the time of the passing of the  
 Land Act shall be deemed to be that anciently observed, unless the  
 contrary be shown : And provided also, that if it be made appear  
 that any holding first became subject to the Ulster custom within  
 such period of *forty years*, the custom to which it so became subject,  
 with any incidents then attached thereto, shall be deemed to be the  
 custom applicable to same under the Land Act and this Act.

A.D. 1879.

forty years  
 before pass-  
 ing of Act  
 unless later  
 origin be  
 shown.

11. It is hereby declared that the provisions contained in the  
 Land Act or in this Act for special enforcement of claims under the  
 Ulster custom of tenant right shall not interfere with any remedy  
 or redress which would, independent of such provisions, exist at law  
 or equity for any person aggrieved by any violation or non-observance  
 of said custom, as same is declared legal by the Land Act  
 and by this Act; and such custom, as to all matters to which it is  
 proved to be applicable, shall be recognised as legally binding in  
 all courts, and in all actions and suits, and for all intents and  
 purposes whatsoever.

Special  
 remedy not  
 to interfere  
 with others.

12. Whenever it shall be proved that the Ulster custom of tenant  
 right generally prevailed in any district at the time of the passing  
 of the Land Act, or at any time within *twenty years* previously, this  
 shall be sufficient to prove that any holding within such district is  
 subject to such custom, unless the contrary be shown.

Proof of  
 custom gene-  
 rally in the  
 district proof  
 that custom  
 applies to  
 holding.

## PART II.

### PROVISIONS FOR THE AMENDMENT OF THE LAND ACT.

13. Whenever any tenant of a holding shall claim compensation  
 under the fourth section of the Land Act in respect of improvements  
 executed on same by himself or his predecessor in title, in tracing  
 his title to such improvements the provisions of the Land Act shall  
 be construed in accordance with the following rules :

Continuous  
 occupation  
 shall be  
 deemed to be  
 continuity of  
 title.

- Whenever in tracing such title it shall be shown that any tenant  
 surrendered, impliedly or in fact, any interest in all or any part  
 of the lands of which such holding consists, in order that a new  
 lease or letting of such land might be made to himself or any  
 other person, and such lease or letting has been so made, the  
 tenant so surrendering shall be deemed to be the predecessor  
 in title of the tenant to whom such lease or letting shall have  
 been made :

[51.]

A 3



A.D. 1879.

The claim of the tenant for compensation in respect of any improvements shall not be defeated merely by showing that after the execution of such improvements he himself, or any of his predecessors in title, shall have entered into a new agreement for the letting of the lands upon which such improvements 5 were executed, or shall have accepted a new lease of such lands, either in whole or in part, or with other and additional lands, or otherwise altered the tenure of same, but every such tenant shall be entitled to compensation in respect of all improvements on the holding which he is quitting, although 10 the tenure may have been changed, and although such holding may be only a portion of the lands held by himself or his predecessors in title, or may include other or different lands, provided he can show that the land on which the improvements were executed has been in point of fact in the continuous 15 occupation of himself, or of persons through whom he derives title from the person executing such improvements; and he shall be entitled to such compensation in the same manner and to the same extent, but not further or otherwise, as if there had been no change or alteration in the tenure of such lands, 20 and he had, at the time of quitting his holding, held the same under the same title as the person who executed said improvements; and for the purpose of this enactment the continuous occupation of the lands shall not be deemed to be broken so long as the possession continues undisturbed, notwithstanding 25 any implied or actual surrender in law or in fact of any existing interest, or the creation of any new tenure or tenancy in the lands, or that possession was impliedly or actually given up and immediately re-taken by the previous possessor or some person deriving through him; but nothing herein contained shall 30 prevent the landlord from availing himself of any clause or provision in any instrument of letting, by which the right to compensation in respect to improvements previously executed shall have been expressly surrendered or barred, or from showing that such new tenure was a benefit received from the 35 landlord in consideration of such improvements within the meaning of the fourth section of the Land Act.

Surrender  
of right to  
compensa-  
tion not to  
be implied.

14. If any tenant in the occupation of any land shall, at any time since the passing of the Land Act, have entered into or shall here-  
after enter into any new contract for the letting of his lands, no 40  
surrender of his right to compensation in respect of past improve-  
ments shall be implied from any such letting or contract, or any  
agreement, covenant, clause, matter, or condition contained therein

or attached thereto, and such tenant shall not be deemed to have given up his right thereafter to claim such compensation unless by clear words expressly surrendering the same; and in any contract or instrument of letting less than a lease for *thirty-one years*, such  
 5 surrender, even if made under seal, shall not be deemed to be valid or binding unless it shall appear to be made for valuable consideration other than the mere new letting of such lands: Provided always, that any substantial and *bonâ fide* reduction of rent fairly compensating for the value of such improvements shall be deemed  
 10 to be a valuable consideration within the meaning hereof.

A.D. 1879.

15. *From and after the passing of this Act*, the twelfth section of the Land Act shall be and the same is hereby repealed.

35 & 34 Vict.  
c. 70. s. 12,  
repealed.

16. Whenever any tenancy shall have been created before the passing of the Land Act by any person himself holding as tenant,  
 15 but having the power to subdemise, the tenants in occupation of such lands, on being evicted by any superior landlord, shall be entitled to compensation under the third section of the Land Act.

Under-  
tenants entit-  
led to com-  
pensation for distur-  
bance.

17. It is thereby declared that in all cases of eviction by title paramount, the persons occupying the lands from which they are  
 20 so evicted shall be entitled to recover compensation for improvements in the manner provided for tenants entitled to compensation under the fourth section of the Land Act.

Tenants  
evicted by  
title para-  
mount entit-  
led to com-  
pensation in  
respect of im-  
provements.

18. No tenant shall be disentitled to obtain compensation under the third section of the Land Act, on the ground that he is evicted  
 25 by the landlord on account of the persistent exercise of any right from which he is debarred by express or implied agreement with his landlord; and so much of the fourteenth section of the Land Act as so enacts shall be and the same is hereby repealed; but  
 30 nothing herein contained shall prevent the chairman in awarding compensation, from taking such conduct of the tenant, and the nature of all the circumstances of such agreement into account, in the manner provided by the eighteenth section of the Land Act.

Tenant not  
debarred  
from com-  
pensation for  
violating  
rules of  
estate.

19. The chairman in determining the fair letting value of the lands, or any other question arising under this Act or the Land Act,  
 35 may, if he shall so think fit, call to his assistance two referees, to be appointed subject to his approval, one by the landlord and one by the tenant; and in case either party shall refuse to appoint such referee, the chairman shall appoint a person to act as referee on behalf of the person so refusing; but the opinion of such referees,  
 40 or either of them, shall not be binding on the chairman, unless so far as he shall think fit to adopt the same.

Chairman  
may call in  
referees.

A.D. 1879.

Chairman or  
judge may  
empanel  
jury.

20. Upon the hearing of any claim under the Land Act or this Act, it shall be lawful for the chairman, if he shall so think fit, to refer any disputed fact or amount of compensation to a jury, in the same manner and with the same effect as to their verdict as he may do upon the trial of ordinary civil bill cases, and the like power may be exercised by the judge upon the hearing of any appeal.

Landlord  
and tenant  
may agree  
for fee farm  
grant of  
holding.

21. When any landlord and tenant agree under the thirty-second section of the Land Act for the sale of the holding to the tenant, they may, if they think fit, agree that such sale shall be carried out by the grant of a perpetuity to the tenant, subject to a fee farm 10 rent, and for all the purposes of the Land Act the grant of a perpetuity, subject to such a rent, shall be deemed and taken to be a sale of the holding to the tenant, within the meaning of the provisions of that Act, and an agreement for such grant shall be deemed and taken to be an agreement for a sale.

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Yearly te-  
nancy deter-  
minable only  
on last gale  
day of year.

22. Whereas by the fifty-eighth section of the Land Act it is enacted that a notice to quit shall not, in the case of a tenant from year to year, take effect until after the expiration of a period of not less than six calendar months from the date of the service of the notice, such period of six calendar months, in the absence of 20 agreement to the contrary, to terminate on the last day of the current year, and doubts have arisen as to the meaning of such enactment, it is hereby declared and enacted, that in all cases of yearly tenancy of an holding within the meaning of the said section, unless there be a special agreement as to the time and 25 mode of determining such tenancy, the tenancy shall only be determinable by a notice to quit, expiring on the last gale day of any calendar year; and every notice to quit so served, and requiring the tenant to give up possession on such gale day, shall be sufficient to determine the tenancy, irrespective of the period of 30 the year at which such tenancy commenced, and such tenancy shall be determined on the day named in such notice in the same manner as if the tenancy had originally commenced upon a day of the year corresponding to such day, but no such notice to quit served after the passing of this Act shall have any force or effect unless same 35 be served *twelve months* before the day on which the tenancy is determined, and from and after the *passing of this Act* these provisions shall apply to any notice of quitting given by the tenant.

Repeal of  
Notice to  
Quit (Ire-  
land) Act,  
1876.

23. The provisions of the preceding section shall be deemed to 40 be in lieu and substitution of those contained in the Notice to Quit (Ireland) Act, 1876, and from and after the *passing of this Act*, the

said last-mentioned Act shall be and the same is hereby repealed: Provided always, that any notice to quit served before the passing of this Act shall have the same force and effect as if this Act had not been passed.

A.D. 1879.

24. The stamp impressed upon any notice to quit shall be impressed with a distinctive die, having the words "notice to quit" imprinted thereon.

Stamp on notice to quit to be a distinctive one.

25. The term "limited owner" in the first part of the Land Act shall, for the purpose of leases authorised thereby, extend to and include any assignee of the estate of a limited owner as defined by such Act; provided always that nothing herein contained shall authorise any mortgagee of a limited estate to make such lease without the assent of the owner of the equity of redemption.

Assignee of estate of limited owner to have power of limited owner.

26. The schedule mentioned in the sixth section of the Land Act, instead of being filed in the Landed Estates Court shall be filed in the office of the clerk of the peace of the county in which the lands are situate, and the clerk of the peace shall cause all such schedules to be kept among the records of the county, and shall enter their contents in a book to be kept by him, and to be called the land registry of such county.

Schedule of improvements to be filed with clerk of the peace.

### PART III.

#### PROVISIONS ENABLING THE OCCUPIERS OF LAND TO OBTAIN CERTAIN AND SECURE TENURES.

27. Subject to the provisions herein-after contained, any person who shall be at the time of the passing of this Act or at any time thereafter the occupying tenant of any holding, the tenure and character of which would entitle him on quitting his holding or being disturbed therein by the act of his landlord to claim compensation under any of the clauses of the Land Act, shall be entitled as herein-after mentioned to claim the benefit of this Act. No contract or agreement of any nature or kind whatsoever heretofore made or hereafter to be made, shall be valid or effectual to prevent the occupier of any such tenement claiming the benefit of this Act, but every such contract or agreement, so far as interferes with or is inconsistent with the provisions of this Act, shall be null and void.

Occupying tenant may claim the benefit of this Act.

28. The person who shall be the occupier of any such tenement in Ireland, and who shall desire to obtain the benefit of this Act, shall commence his proceedings by serving a notice in the form A. in the schedule to this Act annexed or to the like purport and effect,

Tenant to serve notice.

A.D. 1879.

and it shall be sufficient to serve such notice upon the person from whom the occupier shall hold such tenement as tenant, or upon the known agent or receiver of such person, and service of such notice shall and may be made in the same way as is now required in case of a claim for compensation under the Land Act.

Clerk of  
petty sessions  
to supply  
notice.

29. The clerk of any petty sessions in Ireland shall have at all times a sufficient number of printed forms of such notice in accordance with the schedule to this Act, and shall give one or more of such forms to any person applying for same on payment of the sum of *shilling* for each copy.

Notice to be  
served one  
month before  
land sessions.

30. It shall be sufficient to serve such notice one clear month before the land sessions mentioned in such notice; and no further or other notice shall be necessary in order to enable the tenant to have his application heard, or to authorise the chairman to determine such application; and if the landlord does not appear at such land sessions the chairman may proceed in his absence.

To be served  
for division  
in which  
lands situate.

31. Every such notice shall be served for the land sessions of the division in which the lands are situate, and, save as herein-before provided, shall be subject in all respects to the provisions of the Land Act regulating the hearing of claims for compensation under that Act, and all such provisions shall apply to the hearing of an application under this Act.

Notice to  
stay eject-  
ment.

32. The service of any such notice shall operate and be effectual as a bar to and stay of all proceedings brought by any person whatever to evict the interest in the tenement of the person serving same; and in case of any ejectment, whether brought in the superior courts or in any inferior court, it shall be lawful for any judge of the superior courts, or the judge of such inferior court, upon proof by affidavit of the service of such notice, to order either that such ejectment shall be stayed, or that same shall proceed without prejudice to the rights of the occupier to be established in any proceeding under the notice so served, and after the service of such notice, and until same shall be finally determined, no process or execution shall issue to disturb such occupier in possession of such tenement; and all proceedings in ejectment shall be subject to any right which the occupier may establish to a declaration of tenancy under this Act.

Tenancy not  
to be deter-  
mined by  
notice to quit

33. Every person who shall be at the time of the service of such notice the occupier of any tenement entitled to claim the benefit of this Act, shall be entitled upon service of the said notice to hold the said tenement under the provisions of this Act at the rent and

subject to the conditions herein-after mentioned, and to obtain from the chairman the declaration of tenancy herein-after mentioned, that is to say, upon proof that the person serving the notice is the occupying tenant within the meaning of this Act of the premises mentioned in the notice, the chairman shall give to such person a declaration of tenancy in the form B. contained in the schedule to this Act, and shall therein specify the rent to be paid by him in respect of such premises; and no person to whom a declaration of tenancy shall be so given shall be liable to have his tenancy determined by any notice to quit, nor shall he be evicted from his holding unless in the cases herein-after mentioned and under the provisions of this Act.

A.D. 1878.

34. Save and except as it is otherwise provided by this Act, the interest of the tenant under such declaration of tenancy shall be deemed to be a tenancy from year to year, and shall, except as otherwise provided, be subject to all the incidents attachable by law to yearly tenancies in Ireland, including the liability to ejectment for nonpayment of rent.

Tenant to hold as tenant from year to year.

35. Every tenant holding under this Act shall be deemed to have entered into the following covenants with the lessor and his successors in title, and shall be liable to all the same remedies for enforcing such covenants or obtaining redress for their violation, as if he had entered into such covenants by a deed under seal:

Implied covenants on part of tenant.

First. To pay the rent reserved by such declaration in two even and equal half-yearly payments on every *first day of May* and *first day of November*, or such other days as may be specified in such declaration.

Second. Not to let such tenement, or any part thereof, to any person whatever without the consent in writing of the landlord.

Third. That he will not use the said holding or any part thereof for any other purposes than the purposes of an agricultural or pastoral holding without the consent in writing of the landlord.

Fourth. That he will not assign a portion of the said holding so as to subdivide the same without the consent in writing of the landlord.

But nothing in this section contained shall in any manner interfere with any duty or obligation incident by law to a tenancy from year to year.

36. Unless it shall be specially agreed to the contrary, every such declaration of tenancy shall be deemed to contain a reservation

Reservations to be implied.

A.D. 1879

to the lessor of all royalties, mines, minerals, and quarries, with liberty to the lessor to enter on the premises for the purposes of digging and searching for mines and minerals, making full compensation to the tenant for any injury done in such digging and searching; it shall be also deemed to include a reservation to the lessor of a right of entering on the premises by himself, his servants or licensees for the purposes of fishing, sporting, or in pursuit of game, making in like manner full compensation for any actual injury done to the tenant by such entry.

Ejectment  
for persistent  
and malicious  
waste.

37. If at any time judgment in an action for waste shall be recovered against any tenant holding under a declaration of tenancy, or if any injunction shall be obtained against him to restrain him from committing waste, and such tenant after such injunction or such judgment shall wilfully and maliciously persevere in committing the same or any other waste upon the lands, it shall be lawful for the lessor to apply to the land tribunal for liberty to bring an ejectment as if notice to quit had been duly served, and if such liberty shall be granted it shall be lawful for the lessor, on giving proof of the malicious and wilful waste, to recover possession of the lands in said ejectment, in like manner and with the same consequences as if such tenancy had been duly determined by notice to quit.

Acts not to  
be deemed  
violation of  
covenant  
against  
subdivision.

38. None of the following acts or things shall be deemed to be a violation of the herein-before mentioned covenant against subdivision:

Letting the lands or any portion of them in connexure according to the usual course of husbandry:

Letting furnished lodgings:

Letting the whole or part of the house upon such lands with any portion of the premises for any temporary purpose:

Letting any house standing upon the lands at the time of the declaration of tenancy, and which had been usually let by the tenant of such lands.

Labourers  
cottages may  
be erected.

39. Notwithstanding the said covenant it shall be lawful for the tenant of any farm containing thirty acres or upwards, to erect upon such farm one labourer's cottage for every quantity of thirty acres contained on his holding, and to let same to any agricultural labourer, together with any quantity of land not exceeding one acre.

Farms of  
sixty acres  
may be sub-  
divided.

40. Where any farm shall exceed sixty acres and shall be valued in the general valuation at an annual sum of not less than sixty pounds, it shall be lawful for the tenant to assign any portion of the lands not less than thirty acres in extent, and not less than

thirty pounds annual value; provided always, that the portion of the farm remaining in the hands of the tenant after such assignment or letting shall not be less in extent than thirty acres, and of an annual value of not less than *thirty pounds*, and that no rent whatever be reserved to the person assigning such portion; and that the assignee of such portion shall not directly or indirectly covenant and agree to pay any portion of the rent of the holding exceeding the proportion which the portion so assigned to him would bear to the entire value of the holding.

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41. All lettings or assignments made in contravention of this Act, shall, except for authorising the proceedings herein-after mentioned, be absolutely null and void. Every such letting or assignment shall be deemed to be a wrongful act for which the landlord may recover damages jointly against the tenant making the letting and the person or persons taking such letting. The landlord may, in addition to the ordinary writ of injunction, pray for and obtain a special writ of injunction to put him in possession of the lands illegally assigned or let, and he shall have liberty to retain possession of same until the tenant shall have paid him the damages and costs recovered in such action, upon payment of which within six months after possession taken the tenant shall be entitled to the restoration of the lands. The possession by any person of a portion of the lands shall be *prima facie* evidence that such portion was let or assigned.

Remedy against subdivision.

42. The declaration of tenancy shall be conclusive as against all persons whatsoever of the right of the tenant to hold the tenement for the term and at the rent therein mentioned, and the interest thereby created shall bind all interests in said lands; but all parties claiming any interest in such lands shall and may assert their title subject to such interest in the same manner as they might have done if no declaration of tenancy had been made, and the interest thereby created shall not be a bar to any ejectment brought to recover such lands by any person claiming the lessor's interest subject to such tenant's interest, nor shall it invalidate or affect, or be invalidated or affected by, any surrender of any lease or interest in said lands, but the rents reserved in such declaration shall be payable to, and the conditions contained therein shall enure to the benefit of the person entitled to the immediate ownership of such lands for the time being subject to such term; but nothing herein contained shall take away the jurisdiction of a court of equity to set aside any such declaration of tenancy where same shall be obtained by fraud, or to declare any person who shall

Declaration of tenancy conclusive.



A.D. 1870. obtain such declaration of title to be a trustee for any person who may be really entitled to the lessee's interest in such lands.

The declaration of tenancy delivered to the tenant by the chairman shall for all purposes be deemed to be and treated as the title deed of the tenant to his interest in the farm. Any tenant may at any time, upon delivering up the said declaration or showing to the satisfaction of the land tribunal after compliance with any directions given by such tribunal that same has been lost, obtain a new declaration in his own name.

If the land tribunal shall refuse to give a declaration of tenancy to the person applying for same it shall make an order stating the grounds of such refusal, and every such order shall be subject to appeal in the manner provided by the Land Act.

Partial bequest valid.

43. Any devise or bequest of lands held under any such declaration of tenancy to more than one person or any devise or bequest of a portion of such lands shall be absolutely null and void, but nothing herein contained shall prevent any person from charging such lands by his last will and testament, or by any deed executed in his lifetime, with such charges in favour of one or more person or persons as he may think fit.

Mode of fixing rent.

44. In fixing the rent to be specified in the declaration of tenancy the chairman shall proceed in manner following, that is to say, the rent to be fixed shall be that which a solvent and responsible tenant could afford to pay, fairly and without collusion, for the premises after deducting from such rent the addition to the letting value of the premises by any improvements made by the tenant or his predecessors in title in respect of which the tenant on quitting his farm would be entitled to compensation under the provisions of the Land Act.

Arbitrators to be appointed.

45. If the landlord and tenant shall not agree upon the rent to be specified in the declaration of tenancy, same shall be left to the decision of three arbitrators, one to be named by the landlord and one by the tenant, and a third by the two so named. If either party does not appear or refuse or neglect to name an arbitrator the chairman shall name a person to act as arbitrator on behalf of the party so neglecting or refusing.

Tenant may serve notice of claim for improvements.

46. If the tenant shall claim any deduction from the rent on account of improvements executed by him or his predecessors in title, he shall serve along with his claim under this Act a notice specifying the improvements which he shall claim as executed by himself or his predecessors in title, and the chairman shall, if same be not admitted by the landlord, examine into such claim, and shall

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determine as to which of such improvements the tenant is entitled to claim a reduction of rent. The arbitrators shall not take into account in allowing a reduction of rent any improvements except those to which the chairman shall declare the tenant to be so entitled, and the chairman shall hand to them, for the purpose of making their award, a schedule of the improvements in respect of which he shall declare the tenant so entitled. In making their award as to the amount of rent to be fixed, the arbitrators shall separately state the rent which they find a solvent and responsible tenant could afford to pay for such premises, and the annual sum which they find ought to be deducted from that rent on account of the value added to the farm by the tenant's improvements.

47. Before entering on the arbitration each arbitrator shall either before the chairmen in open court or before any magistrate of the county, at any time after the termination of the land sessions, make and subscribe the following oath or affirmation :

Oath of arbitrator.

I, \_\_\_\_\_ appointed (arbitrator) in regard to a claim in which \_\_\_\_\_ is claimant and \_\_\_\_\_ is respondent, do solemnly and sincerely promise and swear that I will honestly and truly, and to the best of my skill and judgment, assess the rent which I believe in my conscience a solvent and responsible tenant could afford to pay, fairly and without collusion, for the farm which is the subject of such claim, and I shall further honestly and truly, and to the best of my skill and judgment, assess the annual sum which I believe in my conscience ought to be deducted from such rent on account of the addition to the letting value of the farm in consequence of the improvements mentioned in the schedule now handed to me.

48. The award of the arbitrators may be made on personal inspection of the lands, or with or without such inspection, on such evidence of value as they may think it necessary to receive. Their award may be handed in in open court during the land sessions at which they are appointed or lodged afterwards with the clerk of the peace. It shall be in the form C. in the schedule to this Act, of which form the clerk of the peace shall have in his office printed copies to be supplied to any one demanding the same and paying for each the sum of sixpence and no more. Unless same shall be set aside in manner herein-after mentioned, their award shall be final and conclusive.

Proceedings on arbitration.

49. The chairman shall have the same jurisdiction of setting aside an award for fraud or for misconduct of the arbitrators as

Chairman may set aside award.

A.D. 1879. — may be exercised by any court of common law over an award pending in such court.

May appoint new arbitrators. 50. If at the next session after the appointment of any arbitrators an award shall not have been made, the chairman may direct them to proceed anew, or, if he shall so think fit, he may desire the appointment in manner herein-before mentioned of new arbitrators. 5

Parties may refer dispute to court of arbitration. 51. The parties may, if they shall so think fit, at any time after the tenant's claim shall be served, refer the question of the rent to be fixed to a court of arbitration appointed and proceeding in manner appointed by the Land Act; they may agree upon any mode of fixing the rent, either by verbal agreement or otherwise, and if it shall be proved to the satisfaction of the chairman that such agreement was entered into, and that the rent had been fixed or can be ascertained in pursuance of same, he shall, if it appears to him to be just to both parties so to do, ascertain and fix the rent in accordance with such agreement. 15

Order to be made on objection. 52. If the landlord or any other person interested shall appear before the chairman and object that the person claiming as occupier is not entitled to the benefit of this Act, the chairman shall hear evidence on such objection, and shall make such order as to him shall appear to be just, and any order he shall make shall, save as heretofore mentioned, be conclusive as to such right. 20

Chairman may adjourn hearing. 53. Before deciding upon such objection or upon the amount of rent to be fixed the chairman may examine the applicant and all other persons who may appear before him to ascertain the persons interested in such land, and in any case in which it shall appear to him that the immediate lessor is not the owner in fee of such lands, he shall, if in his discretion he shall so think fit, adjourn the determination of any such question either as to right or value, to give any other parties interested an opportunity of appearing before him. 30

And direct notices to be served. 54. In all cases whether within the preceding sections or not the chairman shall have power, upon the hearing of any such notice, and whether any person shall appear to oppose same or not, to adjourn the hearing of the same from day to day or from sessions to sessions, and to direct any notices to be served upon any person and to call for any evidence as in his discretion he shall see fit, and he shall hear all persons interested who shall appear before him whether they have been served with notice or not. 35

Map of lands may be annexed. 55. The chairman may at the request of either party, but at the expense of the party so requesting, annex to the declaration a 40

map or plan of the farm which is the subject of it. In any case in which the first gale would occur before a full half year of the new rent shall be due, he shall specify in the declaration the amount payable on such gale day.

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- 5 56. In any case in which the chairman shall sign a declaration of tenancy or shall refuse to sign same he shall have power to award either to the landlord or tenant, or any other party appearing before him, all such costs as shall seem to him to have been caused by unreasonable conduct of either of such parties, and shall have power  
10 to order by whom and to whom such costs shall be paid.

Power to give costs.

57. No proceeding under this Act shall be defeated, delayed, or held invalid for any formal or technical defect, and the signing of the declaration of tenancy by the chairman or judge shall be in all courts and for all purposes conclusive proof that all preliminaries  
15 necessary to give the land tribunal jurisdiction were complied with.

Proceedings not to be held invalid for formal defects.

58. No tenant holding under a lease executed before the passing of this Act shall be entitled to apply for a declaration of tenancy to take effect during the continuance of such lease, he may nevertheless at any time within *twelve months* before the expiration of such lease serve his claim for a declaration of tenancy under this Act, and the chairman may hear such claim and may make a declaration of tenancy to take effect on the expiration of the lease. The persons in occupation of any lands held under such lease shall  
20 be at liberty at any time within *one month* after the expiration or other determination of such lease to give notice of a claim under this Act, and, subject to the provisions of this Act, the person signing such notice shall be deemed an occupying tenant within its meaning.

Persons holding under leases not entitled to apply.

59. A lease made after the passing of this Act shall not nor shall any covenant therein contained be a bar to a proceeding by a tenant to obtain a declaration of title under this Act, unless some shall be bond fide made for a term of not less than *forty-one* years at a rent not exceeding the fair letting value of the lands, and shall  
35 not contain any covenants other than those usual in leases.

Provision as to future leases.

60. If upon the hearing of any application under this Act it shall appear that the tenant owes any arrears of rent, it shall be lawful for the chairman to award and direct, if he shall so think it just so to do, that the declaration of title shall not issue unless and  
40 until such arrears or any portion of them, not in any case exceeding the amount of one year's rent, as ascertained by the declaration of tenancy, together with any costs of proceedings to recover that rent

Arrears of rent to be paid.

A.D. 1879.

which the chairman shall think it reasonable to allow, shall be paid to the landlord or lodged with the clerk of the peace, and in case such sum shall not be so paid or lodged within *six months* after the date of such order, the declaration of tenancy shall be null and void, and the landlord may proceed to recover possession of the land 5 as if this Act had not been passed.

Lord Lieutenant to appoint inspectors of prices.

61. And whereas it is right and expedient that rent ascertained under the provisions of this Act should vary with any change in the value of the land which shall not be caused either by the improvements of the tenant, or by any deterioration of the farm caused by his misconduct or neglect, and the average of agricultural produce is an important element in any change in the value of agricultural land: 10

Be it therefore enacted, that immediately after the passing of this Act, the Lord Lieutenant, by and with the advice and consent of the Privy Council, shall nominate and appoint *three* persons to be inspectors of prices, and to discharge the duties herein-after mentioned. 15

Inspectors to ascertain average prices.

62. The said inspectors shall proceed to fix and ascertain for each county in Ireland the market which may most properly and conveniently be taken as supplying a list of the price of each of the following articles of agricultural produce, that is to say, of beef, of mutton, of wheat, of oats, of barley, and of flax, and when they have so ascertained and fixed such markets they shall publish a list of same in the Dublin Gazette, and they shall also proceed to ascertain and fix, and shall publish in like manner, the average which each of the said commodities has fetched in the market so selected for the seven preceding years, and they shall also in each and every year make and publish in the Gazette, at such time as they may be directed by the Lord Lieutenant, for each of said markets a list of the average prices during the year of each of said commodities and of any other commodities which the Lord Lieutenant shall direct. 20 25 30

Gazette conclusive.

63. The production of a Dublin Gazette containing a publication purporting to contain any of the lists so made out by the said inspectors, shall be conclusive evidence that such list has been duly made out. 35

Landlords or tenant may apply for periodical adjustment of rent.

64. It shall be lawful for either the landlord or tenant of any holding as to which a declaration of title shall have been made under this Act, at any time after *twenty-one* years from such declaration of title, and from time to time after *twenty-one* years from any new adjustment of rent as herein-after mentioned, to apply to the land tribunal for 40

a re-adjustment of the rent then payable in respect of such holding. Notice of such application shall be given by the tenant to the landlord in manner herein-before prescribed on the application for the original declaration of tenancy, and by the landlord to the tenant by delivering such notice to him personally, or by leaving same at the dwelling house, on the lands, or in such other manner as the chairman shall by any special order direct; all the rules herein-before provided as to the hearing of the original claim shall be applicable to the hearing of a claim for re-adjustment of rent; and save as is herein-after provided the rent to be payable in future for the holding shall be ascertained in the same manner and subject to the same rules, conditions, and procedure as on a claim for a declaration of tenancy.

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65. In estimating the yearly sum to be assessed and allowed for the value added to the farm by the tenant's improvements the arbitrators or other persons or person ascertaining the rent to be paid in future shall include in their estimate of such sum all improvements which shall appear to them to add to the letting value of the farm since the last ascertainment of rent; and in estimating such value they shall take into account the amount of the rent previously fixed and any variations in the price of agricultural produce which shall have occurred since it was so fixed.

Value of improvements not to be included in new rent.

66. The rent so ascertained shall be the rent thereafter to be paid for the said holding in lieu and stead of the rent aforesaid in the original declaration of tenancy, and the chairman shall grant either landlord or tenant a declaration in the form D. mentioned in the schedule to this Act of the rent so ascertained.

New declaration to be given.

67. Every arbitrator or other person taking part in such re-adjustment of rent, instead of the oath herein-before mentioned, shall make and subscribe the following oath:

Oath of arbitrator.

"I, \_\_\_\_\_, appointed as an arbitrator (or juror) in respect of the claim made for the re-adjustment of rent in respect of the holding (\_\_\_\_\_) of which \_\_\_\_\_ is landlord and \_\_\_\_\_ is tenant, do solemnly and sincerely swear that I will well and truly, and without fear, favour, or affection fulfil my office of \_\_\_\_\_  
 "I will well and truly and to the best of my skill and judgment fix and assess the rent which a solvent and responsible tenant could afford, fairly and without collusion, to pay for such holding if same were now in a due and proper state of cultivation;  
 "and I will also well and truly and to the best of my skill and judgment ascertain and assess the annual sum which I shall in

A.D. 1879. — “ my conscience believe to be now added to the letting value of  
 “ the said lands by improvements effected by the said tenant, or  
 “ those who were tenants before him, since the  
 “ being the day on which the rent now payable was fixed.”

Orders may be appealed from. 68. Except where it is otherwise provided any order made by 5  
 the land tribunal under this Act shall be subject to appeal in the  
 manner provided by the Land Act.

Judges to make rules. 69. All the powers conferred upon the judges of the Court for  
 Land Cases Reserved by the thirty-first section of the Land Act,  
 and all the provisions of the said section, shall apply to pro- 10  
 ceedings under the third portion of this Act, and the judges of  
 the said court or any five of them as provided by this Act shall,  
 within *three months* after the passing of this Act, make such new  
 and additional rules not inconsistent with this Act as may be  
 necessary for carrying its provisions into effect.

## SCHEDULE.

## FORM A.

## NOTICE OF CLAIM.

SIR,

- 5 I HEREBY give you notice that it is my intention at the next land sessions to be held at the town of Ballibay, to apply for a declaration of tenancy under the Landlord and Tenant (Ireland) Act, 1879, of the lands of Avilreagh, which I now hold as tenant from year to year to you [or, which I now hold as your  
10 tenant under a lease for years, which will expire on ] [or, which I lately held as your tenant under a lease which terminated on ].

- And I further give you notice that in fixing the rent to be paid in future for such lands, I will claim that the letting value of  
15 the land is now increased by the annual sum of fifteen pounds, in consequence of the improvements effected by myself or my predecessors in title, and which are specified in the schedule hereunto annexed.

*To John Bond, Esq.**William Moffat.*

- 20 The landlord of said lands.

Tenant of the said lands.

December 1st, 1878.

## FORM B.

## DECLARATION OF TENANCY.

- 25 Between John Delany, Claimant, and John Adams, Respondent.  
In the matter of a claim made by John Delany, of Castleroa, for a declaration of tenancy under the Landlord and Tenant (Ireland) Act, 1879, as to the lands of Castleroa, in the parish of Cloyne, barony of Imokilly, and county of Cork.  
30 I, the judge presiding at the land sessions held this day for the division of Middleton, at Middleton, in the same county, do hereby declare that the said John Delany holds the lands of Castleroa, containing thirty-five acres or thereabouts, and bounded (describe the boundaries) or [as same are set out upon the plan or map hereunto  
35 annexed] as tenant under the provisions of the Land Tenure Act,  
[51.] C 8



[A.D. 1878. 1878, subject to the reservations and provisions in that Act contained, and at the annual rent of thirty-five pounds, payable in two equal half-yearly payments, payable on the first day of May and first day of November, the first payment of seventeen pounds ten shillings to be made on the first day of May next.

Given under my hand this 12th day of January 1878.

*W. Robinson,*  
Judge.

*Noble Johnson,*  
Clerk of the Peace. 10

# FORM C.

## AWARD OF ARBITRATORS.

In the matter of a claim of John Morris, Claimant, Charles Boyd, Respondent, the said John Morris claiming a declaration of tenancy in that part of the lands of Segahan, now (or lately) held by him as tenant to the said Charles Boyd. 15

We, William James and Henry Thompson, two of the arbitrators appointed to inquire into the value of the lands the subject of said claim, do hereby find and declare as to the said lands of Segahan, now held by the said John Morris, as tenant to the said Charles Boyd, which lands are the subject of the claim of the said John Morris. 20

That the rent of thirty pounds a year and no more is the rent which a solvent and responsible tenant could afford, fairly and without collusion, to pay for the said lands. 25

And we further find and assess that the annual sum added to the letting value of the said lands by the improvements contained in the schedule handed to us amounts to eight pounds five shillings and no more.

Given under our hands this 15th day of May 1878.

(Signed) *William James,*  
*Henry Thompson.* 30

## FORM D.

Between Thomas Adams, Claimant, and James Delany,  
Respondent.

5 In the matter of a claim made by the said Thomas Adams for a  
re-adjustment of the rent of the lands of Castleroa, in the  
barony of Imokilly, and county of Cork, which the said  
Jas. Delany now holds as tenant to the said Thomas Adams  
under a declaration of tenancy duly made at a land sessions  
held at Middleton, on the 12th day of January 1878, between  
10 John Delany, Claimant, and John Adams, Respondent.

I, the judge presiding at the land sessions held this day at  
Middleton, for the division of Middleton, in the county of Cork, do  
hereby declare and determine that the rent payable in future for the  
said lands shall be the sum of forty pounds in lieu and instead of  
15 the sum of thirty-five pounds specified in the said declaration of  
tenancy; the first gale of twenty pounds of such new rent to be  
payable on the first day of May next.

Given under my hand, this 12th day of January 1878.

(Signed) *James Harris,*

Judge.

*Noble Johnson,*

Clerk of the Peace.

**Landlord and Tenant  
(Ireland) (No. 2).**

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*A*

**B I L L**

To amend the Law of Landlord and  
Tenant in Ireland.

*(Proposed and brought in by  
Mr. Stansfeld, Mr. Sturt, and Mr. Stowe.)*

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*Ordered by the House of Commons, to be Printed,  
11 December 1870.*

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[2011 A.]

Under 4 cc.